



2723 South State Street, Suite 150
Ann Arbor, MI 48104
(866) 534-6177
LawCompany.com

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW BOARD OF IMMIGRATION
APPEALS

_____)
)
In the Matter of:)
)
_____)
)
Removal Proceedings)
)
_____)

File No. _____

RESPONDANT'S BRIEF IN SUPPORT OF APPEAL

Atty ID No. _____

Phone: _____
Fax: _____
Email: _____



TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3

STATEMENT OF JURISDICTION.....5

STATEMENT OF THE CASE5

STATEMENT OF THE FACTS.....6

SUMMARY OF THE ARGUMENT.....7

ARGUMENT

I. [REDACTED] Application for Asylum is Not Time-Barred as a Matter of Law Because he was an [REDACTED] [REDACTED] at the Time of His Entry to the United States.....7

II. [REDACTED] Resistance to the [REDACTED] [REDACTED] [REDACTED] Demonstrates Past Persecution on Account of [REDACTED]8

A. *Despite the IJ’s Credibility Determination, the IJ Erred in Both Disregarding [REDACTED] Testimony and Misconstruing Uncontested Corroborating Evidence Demonstrating Past Persecution*.....8

B. [REDACTED] *Credible and Consistent Testimony Demonstrates His Persecution was on Account of [REDACTED]*13

CONCLUSION.....15



TABLE OF AUTHORITIES

CASES

Buendia v. Holder, 616 F.3d 711 (7th Cir. 2010).....14

Castillo-Villagra v. I.N.S., 972 F.2d 1017 (9th Cir. 1992).....11

Espinosa-Cortez v. Att’y Gen., 607 F.3d 101 (3d Cir. 2010).....14

Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993).....14

Fei Mei Cheng v. Att’y Gen., 623 F.3d 175 (3d Cir. 2010).....9

Ghebrehiwot v. Att’y Gen., 467 F.3d 344 (3d Cir. 2006).....13

Valdiviezo-Galdamez v. Att’y Gen., 663 F.3d 582 (3d Cir. 2011).....14

Voci v. Gonzales, 409 F.3d 607 (3d Cir. 2005).....13

Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987).....13

STATUTES

8 U.S.C. § 1158(a)(2)(B).....7

8 U.S.C. § 1158(a)(2)(E).....8

8 U.S.C. § 1158(b)(1)(B)(i).....13

8 U.S.C. § 1232(d).....8

REGULATIONS

8 C.F.R. § 1003.1(b)(3).....5

8 C.F.R. § 1003.1(b)(7).....5

8 C.F.R. § 1003.1(d)(3)(i).....5

8 C.F.R. § 1003.1(d)(3)(ii).....5



REPORTS

Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, <i>Honduras Country Reports on Human Rights Practices</i> , 2018.....	10,11
Howard L. Gray, <i>Gangs and Transnational Criminals Threaten Central American Stability</i> , A U.S. Army War College Research Project (2009).....	12
“Honduras: Gang Violence,” Library of Congress Report to the U.S. Department of Justice (2013).....	12
<i>Responding to Violence in Central America: A Report by the United States Senate Caucus on International Narcotics Control</i> , 112th Cong., 1st Sess., (Sept. 2011).....	12



STATEMENT OF JURISDICTION

Respondent [REDACTED] [REDACTED] a native and citizen of [REDACTED], appeals the Immigration Judge's ("IJ") removal order decision by and through the IJ's dismissal of his asylum application under the Refugee Act of 1980, Pub. L. No. 96-212, § 208 (codified as amended as the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158 *et. seq.*), dated July 12, 2019. This appeal was timely filed on _____; therefore, this Board has jurisdiction pursuant to 8 C.F.R. §§ 1003.1(b)(3) and 1003.1(b)(7).

STANDARD OF REVIEW

The Board reviews an IJ's factual findings to determine if they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). This Board may review all questions of law, discretion, and judgment in appeals from decisions of the IJ *de novo*. 8 C.F.R. §1003.1(d)(3)(ii).

STATEMENT OF THE CASE

Respondent [REDACTED] [REDACTED] appeals the decision of the Immigration Judge ("IJ") dated [REDACTED], denying his application for asylum and, therefore, relief from removal.

[REDACTED] a citizen of [REDACTED] entered the United States on [REDACTED], at the age of [REDACTED]. The Department of Homeland Security began removal proceedings. [REDACTED] [REDACTED] conceded removability, requested asylum, and therefore, withholding of removal under 8 U.S.C. § 1158 *et. seq.* Immigration Judge denied [REDACTED] application for asylum, [REDACTED] appeals.

STATEMENT OF THE FACTS

Respondent [REDACTED] [REDACTED] a native and citizen of [REDACTED], was born in [REDACTED], on [REDACTED] [REDACTED] JA at 1. His father abandoned him, and he lived with his mother and siblings. [REDACTED]. At [REDACTED] years of age, in [REDACTED], and while attending school, [REDACTED] was approached by [REDACTED]. JA at [REDACTED] [REDACTED] members were readily identifiable because of their [REDACTED], but also their [REDACTED]. JA at [REDACTED]. By the time [REDACTED] was [REDACTED] old, local [REDACTED] had approached him, demanding he infiltrate the school and [REDACTED]. *Id.* He refused and refused repeatedly. JA [REDACTED] Members of the [REDACTED] or [REDACTED] persisted by physically attacking him. *Id.* They also, importantly, threatened to [REDACTED] him when he became an adult on [REDACTED]. JA at 67. So intent was [REDACTED] in enlisting [REDACTED] to infiltrate schools, [REDACTED] even went so far as to openly [REDACTED] assaulting [REDACTED] [REDACTED] classmates. JA at [REDACTED] According to testimony, there were numerous threats and readily identified more than a dozen distinct threats. JA [REDACTED] For a time, [REDACTED] fled to [REDACTED] but was induced to return when [REDACTED] physically attacked his mother. JA [REDACTED]. During that same year, he was physically assaulted on a nearly daily basis on his way to and [REDACTED], and written threats were sent to his home. JA at [REDACTED]. Those written threats demanded [REDACTED] to work for them in [REDACTED]. *Id.* At the instruction of his mother, the [REDACTED] quit school and severely limited his interaction with the [REDACTED] JA at [REDACTED] Even as he avoided physical confrontation, [REDACTED] still received written threats sent to his home in the years that he avoided [REDACTED]. JA at [REDACTED] Despite the attacks and [REDACTED] demands, [REDACTED] did not seek the aid of the local police. He believed such attempts were futile because the police were not seen as trustworthy or

¹ According to latest estimates, [REDACTED] a only supported a population of [REDACTED].

protecting the interests of the local public. JA [REDACTED] In [REDACTED], approaching his [REDACTED], and fearing he would be [REDACTED], his mother [REDACTED] and arranged to have him sent to the United States. JA at [REDACTED] Specifically, he crossed into the U.S. on [REDACTED], near [REDACTED] near the city of [REDACTED] JA [REDACTED] In [REDACTED], while in [REDACTED] [REDACTED] [REDACTED] cousin, [REDACTED], was killed by [REDACTED] for both his failure to pay a [REDACTED] and for his cousin's persistent avoidance to join a [REDACTED]. JA [REDACTED]

SUMMARY OF THE ARGUMENT

After considering the evidence for [REDACTED] minutes, the Immigration Judge's decision clearly ignored both relevant law and facts, as demonstrated by her decision denying [REDACTED] [REDACTED] application for asylum. First, the IJ failed to take account of the fact that [REDACTED] [REDACTED] [REDACTED] status meant his application for asylum was not time-barred as a matter of law. Second, the IJ also erred in both disregarding [REDACTED] credible testimony and the uncontested corroborating evidence, both of which demonstrated [REDACTED] persecution based on his [REDACTED] opposed to the infiltration of [REDACTED].

ARGUMENT

I. [REDACTED] Application for Asylum is Not Time-Barred as a Matter of Law Because he was an [REDACTED] at the Time of His Entry to the United States

As a preliminary matter, the IJ concluded [REDACTED] was ineligible for asylum because he failed to apply for asylum within one year of his entry to the United States. *See* 8 U.S.C. § 1158(a)(2)(B). The IJ's legal conclusion, however, ignores both the facts adduced during the proceedings and applicable law.

According to his testimony and the evidence introduced at the immigration proceedings, [REDACTED] was only [REDACTED] old and alone when he crossed the border on [REDACTED]. See JA [REDACTED] [REDACTED] age at the time of his entry to the U.S. and circumstances of his particular arrival, however, squarely fits one of Congress’s enumerated exceptions to an applicant’s filing requirement. According to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), codified at 8 U.S.C. §§ 1158, 1232(d), children, or those who have not attained the age of 18, entering the U.S. unlawfully, without a parent or other legal guardian are exempt from the one-year filing requirement. See 8 U.S.C. § 1158(a)(2)(E). Since [REDACTED] was an [REDACTED] when he crossed into the United States, the dictates of TVPRA apply, and his application for asylum is not time-barred. *Id.*

II. [REDACTED] Resistance to [REDACTED] Infiltration of [REDACTED] Demonstrates Past Persecution on Account of His [REDACTED]

A. Despite the IJ’s Credibility Determination, the IJ Erred in Both Disregarding [REDACTED] Testimony and Misconstruing Uncontested Corroborating Evidence Demonstrating Past Persecution

Insofar as a [REDACTED] [REDACTED] bears the evidentiary burden of proof and persuasion in connection with his asylum application, it is incumbent upon the Board of Immigration Appeals to take note of the IJ’s credibility determination. As the IJ concluded, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] JA at [REDACTED] Despite her credibility determination, the IJ nonetheless concluded that [REDACTED] produced “[REDACTED]” JA at [REDACTED] Close inspection of the record, however, reveals the IJ either wholly

disregarded ██████████ testimony and/or misconstrued or otherwise ignored uncontested corroborating evidence demonstrating his past persecution.

As detailed above, ██████████ narrative, which underwent direct, judicial, and cross-examination, speaks to a boy fearing for his life while resisting the intimidation of a transnational criminal and political organization known as the ██████████. To briefly summarize, ██████████ credibly recounted that beginning at age ███, he had encountered ██████████. By the time he was ██████████, he was subjected to outright physical intimidation. In addition to being routinely physically attacked, ██████████ observed sexual assaults of ██████████. He was also threatened with ██████████ and death if he did not relent to ██████████ demand he infiltrate ██████████ on behalf of the ██████████. In response to his repeated refusal to extend the ██████████ reach, he was routinely beaten and harassed for resisting the ██████████ goal to infiltrate and control ██████████ ██████████. After a year, he refrained from attending ██████████ entirely and limited his public presence. After years of forced seclusion alongside persistent threats, he made his way to the United States. Even as he found his way here, however, the threats against his mother and sister continued. And less than a year ago, his cousin was murdered by ██████████ back in ██████████. Despite ██████████ narrative, the IJ determined there was “██████████.” Her conclusion not only ignores well-established precedent, *see Fei Mei Cheng v. Att’y Gen.*, 623 F.3d 175, 190-98 (3d Cir. 2010)(the severity of each incident should not be addressed in isolation without considering the cumulative effect of events), she appears to draw her conclusion based upon ██████████ testimony lacking in corroboration, despite admitting evidence which did precisely that.

Even as she discounted ██████████ credible testimony, the IJ accepted the U.S. Department of State’s *Human Rights Report for Honduras* as evidence of his claims. JA ██████████ ██████████ A perusal of the U.S. government’s uncontested report, however, demonstrates she either

ignored its contents or misconstrued its significance. For example, the IJ repeatedly appears to question why ██████████ refused to approach the police for help against the ██████████ during his plight from ██████████. Ignoring the fact that he was ██████████ and fatherless, the State Department report glaringly points out:

██████████
██████████
██████████
██████████
██████████

JA at ██████████ (emphasis added). Said another way, not only does the State Department report corroborate ██████████ testimony regarding the ██████████ tactics used against the police, but it also demonstrates ██████████ reached a peak in ██████████—the same time ██████████ avoided ██████████ altogether. *Id.* Moreover, the same report corroborates ██████████ tactics that ██████████ credibly recalled in his testimony. They included the ██████████ use of murder and kidnapping but also the routine intimidation of police and prosecutors—the very institutions supposed to protect young men like ██████████ *Id.* at ██████████ Beyond tactics, the report also concludes that corruption was both a serious problem and linked to ██████████

██████████
██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████
██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████
██████████

JA ██████████ (emphasis added). In fact, in very next sentence points out that the current government had to purge more than ██████████ personnel from its security forces as a result of its failures to stem impunity and corruption. *Id.* Not only is the State Department report replete with instances where the ██████████ government was found to be corrupt, but it also identified the ██████████ used to target ██████████, which were identical to those testified by ██████████ Despite corroborating

his testimony, IJ gives them no weight. To be more specific, the report observes that [REDACTED] are living on the streets. JA at [REDACTED]. The common cause for their plight “[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].” *Id.*

Perhaps even more perplexing, even as the IJ wholly ignored uncontested evidence during the proceedings, she also appears to misconstrue the report to reach an irrelevant outcome. To be more specific, the IJ attempts to attribute the [REDACTED] government’s purported willingness to combat [REDACTED], as reflected in the [REDACTED] as a means in which to undermine or underemphasize [REDACTED] persecution and reluctance to report matters to the police. The problem is the report is *dated in* [REDACTED] and therefore is *irrelevant* as to any government willingness to take on [REDACTED] during the period for [REDACTED] persecuted [REDACTED] which was from [REDACTED].

Moreover, other publicly-available U.S. Government sources corroborate the extent of [REDACTED] of terror.² Also known as “[REDACTED],” “[REDACTED]” “[REDACTED],” or simply, “[REDACTED]” in Central America, [REDACTED] is recognized by various entities of U.S. Government as a multi-ethnic transnational criminal organization with [REDACTED] members in 20 states across the U.S. alone and is allied with the [REDACTED]. According to a Library of Congress

² The Board *sua sponte* may take judicial notice of these reports, pursuant to Rule 201. *See* FED. R. EVID. 201(C) (“The Court may take judicial notice on its own.”). *See, e.g., Castillo-Villagra v. I.N.S.*, 972 F.2d 1017, 1030 (9th Cir. 1992) (taking judicial notice of State Department country report for the limited purpose of determining whether the petitioner’s claims were sufficiently plausible).

report to the U.S. Department of Justice, [REDACTED] has elevated [REDACTED] to one of the highest homicide rates in the world.³ JA at [REDACTED].

Equally important is the abundant publicly-available evidence that [REDACTED] is more than a criminal organization, but a political one.⁴ Despite testimony and evidence introduced at trial, which were accepted as evidence by the IJ, undoubtedly, [REDACTED] are not merely a local criminal enterprise, but political actors. The IJ not only ignored the significance of the conclusions drawn by the State Department's report, but an independent analysis by the U.S. Army War College also characterize [REDACTED] and organized crime groups as engaged in efforts to establish political domination. JA at [REDACTED]. In particular, these [REDACTED] are infiltrating the country's state structures to assume power and authority. [REDACTED], such as [REDACTED], [REDACTED], have effectively rendered the states irrelevant in significant respects, and act as *de facto* governments. Therefore, the IJ's views that the [REDACTED] is only targeting and persecuting individuals for economic and personal reasons misunderstand the reality of life in [REDACTED].

Consequently, after a thorough examination of the totality of the evidence presented, [REDACTED] not only clearly established he possessed a subjective fear of persecution, but based upon all of the evidence, his fear is both genuine but objectively reasonable. *See Matter of*

³ See "[REDACTED]s: [REDACTED]," Library of Congress Report to the U.S. Department of Justice available at [REDACTED]

Apart from the Library of Congress Report to the Department of Justice, according to the UN Office on Drug and Crime, there are [REDACTED]. Other sources estimate that the number of [REDACTED] in [REDACTED] alone ranges from [REDACTED]. *See Responding to Violence in Central America: A Report by the United States Senate Caucus on International Narcotics Control*, 112th Cong., 1st Sess., at 23 & 25, (Sept. 2011), available at [REDACTED] JA at 3 [REDACTED]

⁴ Howard L. Gray, [REDACTED] *Criminals Threaten Central American Stability*, A U.S. Army War College Research Project (2009).

Mogharrabi, 19 I&N Dec. 439 (BIA 1987); *Voci v. Gonzales*, 409 F.3d 607 (3d Cir. 2005). See also *Ghebrehiwot v. Att' y Gen.*, 467 F.3d 344, 351 (3d Cir. 2006) (quoting *Mitev v. INS*, 67 F.3d 1325, 1331 (7th Cir.1995)).

B. [REDACTED] *Credible and Consistent Testimony Demonstrates His Persecution was on Account of His [REDACTED]*

It is, of course, well-established an applicant for asylum must also demonstrate the persecution he fears is on account of his race, nationality, religion, membership in a particular social group, or political opinion. 8 U.S.C. § 1158(b)(1)(B)(i). While supported by the evidence introduced during the trial proceedings, it appears the IJ summarily dismissed [REDACTED] assertion that he was persecuted on account of his [REDACTED].

Close inspection of the record demonstrates, however, the political opinion [REDACTED] [REDACTED] repeatedly expressed, while inartful, was his refusal to be part of the [REDACTED] infiltration of the [REDACTED]. Despite being impoverished thirteen-year-old, [REDACTED] obdurately stood his ground and refused to join in the gang's infiltration of the schools. Compelled to consider the totality of circumstances, this Board should not refrain, as the IJ did, in finding [REDACTED] active resistance against the political entity, [REDACTED].

What began as the intimidation of a [REDACTED] child, continued throughout [REDACTED] [REDACTED] [REDACTED] e year even as he endured repeated physical punishments. After suffering their relentless punishment, he stayed away from [REDACTED], even as he occasionally traveled from home to purchase items. Perhaps most indicative of the fact that [REDACTED] sought him out to infiltrate the [REDACTED] were specific threats [REDACTED] would kidnap or [REDACTED] once he reached adulthood. These specific threats were presumably because once an adult, and he was of little to no value to the [REDACTED] once he no longer had routine access to [REDACTED]. Note, too, the testimony

adduced at trial clearly demonstrates that [REDACTED] children were the target of the [REDACTED], as evidenced by the sexual abuse of [REDACTED] [REDACTED]. This set of facts read in combination with the testimony and corroborating evidence by government sources demonstrates the requisite criteria for persecution for one's political opinion under the INA have been met. *See Espinosa-Cortez v. Att' y Gen.*, 607 F.3d 101, 110 n.7 (3d Cir. 2010) (an applicant may provide either direct or circumstantial evidence to show the motive for persecution is the applicant's own political beliefs, real or imputed). Like the facts at issue here, the Seventh Circuit's guidance in *Buendia v. Holder*, 616 F.3d 711, 716-17 (7th Cir. 2010), is particularly instructive. In *Buendia*, the Seventh Circuit held an asylum applicant's refusal to cooperate with a known criminal entity, particularly in hindering their attempts to infiltrate and politically dominate societal entities can nonetheless constitute a valid political opinion upon which to grant asylum. *Id.* at 717. *See also Valdiviezo-Galdamez v. Att' y Gen.*, 663 F.3d 582 (3d Cir. 2011) (remanded to determine whether Honduran youth who have been actively recruited by gangs but have refused to join because they oppose gangs).

Consequently, because of the [REDACTED] position as both a criminal and political actor in [REDACTED] and because of [REDACTED] resistance or refusal to participate in the infiltration of [REDACTED] through [REDACTED], he has established the necessary evidentiary criteria in support and decision of the IJ should be reversed. *Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993).



CONCLUSION

For the foregoing reasons, the Board should reverse the decision of the Immigration Judge regarding relief from removal.

Respectfully submitted,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Phone: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]